

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBIN POWELL,

Plaintiff,

Hon. Ellen S. Carmody

v.

Case No. 1:15-CV-1176

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

OPINION

This is an action pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), to review a final decision of the Commissioner of Social Security denying Plaintiff's claim for Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI) under Titles II and XVI of the Social Security Act. On February 19, 2016, the parties agreed to proceed in this Court for all further proceedings, including an order of final judgment. (ECF No. 8).

Section 405(g) limits the Court to a review of the administrative record and provides that if the Commissioner's decision is supported by substantial evidence it shall be conclusive. The Commissioner has found that Plaintiff is not disabled within the meaning of the Act. For the reasons articulated herein, the Commissioner's decision is **vacated and this matter remanded for further factual findings pursuant to sentence four of 42 U.S.C. § 405(g).**

STANDARD OF REVIEW

The Court's jurisdiction is confined to a review of the Commissioner's decision and of the record made in the administrative hearing process. *See Willbanks v. Sec'y of Health and Human Services*, 847 F.2d 301, 303 (6th Cir. 1988). The scope of judicial review in a social security case is limited to determining whether the Commissioner applied the proper legal standards in making her decision and whether there exists in the record substantial evidence supporting that decision. *See Brainard v. Sec'y of Health and Human Services*, 889 F.2d 679, 681 (6th Cir. 1989).

The Court may not conduct a de novo review of the case, resolve evidentiary conflicts, or decide questions of credibility. *See Garner v. Heckler*, 745 F.2d 383, 387 (6th Cir. 1984). It is the Commissioner who is charged with finding the facts relevant to an application for disability benefits, and her findings are conclusive provided they are supported by substantial evidence. *See* 42 U.S.C. § 405(g). Substantial evidence is more than a scintilla, but less than a preponderance. *See Cohen v. Sec'y of Dep't of Health and Human Services*, 964 F.2d 524, 528 (6th Cir. 1992) (citations omitted). It is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *See Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Bogle v. Sullivan*, 998 F.2d 342, 347 (6th Cir. 1993). In determining the substantiality of the evidence, the Court must consider the evidence on the record as a whole and take into account whatever in the record fairly detracts from its weight. *See Richardson v. Sec'y of Health and Human Services*, 735 F.2d 962, 963 (6th Cir. 1984).

As has been widely recognized, the substantial evidence standard presupposes the existence of a zone within which the decision maker can properly rule either way, without judicial interference. *See Mullen v. Bowen*, 800 F.2d 535, 545 (6th Cir. 1986) (citation omitted). This

standard affords to the administrative decision maker considerable latitude, and indicates that a decision supported by substantial evidence will not be reversed simply because the evidence would have supported a contrary decision. *See Bogle*, 998 F.2d at 347; *Mullen*, 800 F.2d at 545.

PROCEDURAL POSTURE

Plaintiff was 51 years of age on her alleged disability onset date. (PageID.330). She successfully completed high school and worked previously as a cashier and cooks helper. (PageID.47-48, 116). Plaintiff applied for benefits on April 11, 2012, alleging that she had been disabled since October 15, 2006, due to arthritis in her hands and feet, bunions, carpal tunnel syndrome, ADHD, depression, and anxiety. (PageID.330-42, 388). Plaintiff's application was denied, after which time she requested a hearing before an Administrative Law Judge (ALJ). (PageID.164-328). On July 8, 2013, Plaintiff appeared before ALJ James Prothro with testimony being offered by Plaintiff and a vocational expert. (PageID.110-62). In a written decision dated August 16, 2013, the ALJ determined that Plaintiff was not disabled. (PageID.200-09). The Appeals Council remanded the matter to the ALJ for further administrative action. (PageID.215-16).

On June 10, 2014, Plaintiff again appeared before ALJ James Prothro with testimony being offered by Plaintiff, a vocational expert, and a medical expert. (PageID.55-109). In a written decision dated August 1, 2014, the ALJ determined that Plaintiff was not disabled. (PageID.39-49). The Appeals Council declined to review the ALJ's determination, rendering it the Commissioner's final decision in the matter. (PageID.21-24). Plaintiff subsequently initiated this action pursuant to 42 U.S.C. § 405(g), seeking judicial review of the ALJ's decision.

ANALYSIS OF THE ALJ'S DECISION

The social security regulations articulate a five-step sequential process for evaluating disability. *See* 20 C.F.R. §§ 404.1520(a-f), 416.920(a-f).¹ If the Commissioner can make a dispositive finding at any point in the review, no further finding is required. *See* 20 C.F.R. §§ 404.1520(a), 416.920(a). The regulations also provide that if a claimant suffers from a nonexertional impairment as well as an exertional impairment, both are considered in determining her residual functional capacity. *See* 20 C.F.R. §§ 404.1545, 416.945.

The burden of establishing the right to benefits rests squarely on Plaintiff's shoulders, and she can satisfy her burden by demonstrating that her impairments are so severe that she is unable to perform her previous work, and cannot, considering her age, education, and work experience, perform any other substantial gainful employment existing in significant numbers in the national economy. *See* 42 U.S.C. § 423(d)(2)(A); *Cohen*, 964 F.2d at 528. While the burden of proof shifts to the Commissioner at step five of the sequential evaluation process, Plaintiff bears the burden of proof through step four of the procedure, the point at which her residual functioning capacity (RFC) is determined. *See Bowen v. Yuckert*, 482 U.S. 137, 146 n.5 (1987); *Walters v. Comm'r of Soc. Sec.*,

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- ¹1. An individual who is working and engaging in substantial gainful activity will not be found to be "disabled" regardless of medical findings (20 C.F.R. §§ 404.1520(b), 416.920(b));
 2. An individual who does not have a "severe impairment" will not be found "disabled" (20 C.F.R. §§ 404.1520(c), 416.920(c));
 3. If an individual is not working and is suffering from a severe impairment which meets the duration requirement and which "meets or equals" a listed impairment in Appendix 1 of Subpart P of Regulations No. 4, a finding of "disabled" will be made without consideration of vocational factors. (20 C.F.R. §§ 404.1520(d), 416.920(d));
 4. If an individual is capable of performing her past relevant work, a finding of "not disabled" must be made (20 C.F.R. §§ 404.1520(e), 416.920(e));
 5. If an individual's impairment is so severe as to preclude the performance of past work, other factors including age, education, past work experience, and residual functional capacity must be considered to determine if other work can be performed (20 C.F.R. §§ 404.1520(f), 416.920(f)).

127 F.3d 525, 528 (6th Cir. 1997) (ALJ determines RFC at step four, at which point claimant bears the burden of proof).

The ALJ determined that Plaintiff suffers from: (1) carpal tunnel syndrome; (2) Heberden's nodes; (3) osteoarthritis; (4) varicose veins; (5) obesity; and (6) bunions, severe impairments that whether considered alone or in combination with other impairments, failed to satisfy the requirements of any impairment identified in the Listing of Impairments detailed in 20 C.F.R., Part 404, Subpart P, Appendix 1. (PageID.43-45).

As for Plaintiff's residual functional capacity, the ALJ found that Plaintiff retained the ability to perform light work subject to the following limitations: (1) she can lift 20 pounds occasionally and 10 pounds frequently; (2) during an 8-hour workday, she can stand/walk and sit for 6 hours each; (3) she can frequently climb ramps and stairs; (4) she can occasionally climb ladders, ropes, and scaffolds; (5) she can frequently balance, stoop, kneel, crouch, and crawl; (6) she can frequently perform handling activities with her upper extremities; and (7) she is limited to simple, repetitive tasks. (PageID.45). Based on the testimony of a vocational expert, the ALJ found that Plaintiff could still perform her past relevant work as a cashier and cooks helper. The ALJ concluded, therefore, that Plaintiff was not entitled to disability benefits.

I. The ALJ's RFC Determination is not Supported by Substantial Evidence

A claimant's RFC represents the "most [a claimant] can still do despite [the claimant's] limitations." *Sullivan v. Commissioner of Social Security*, 595 Fed. Appx. 502, 505 (6th Cir., Dec. 12, 2014); *see also*, Social Security Ruling 96-8P, 1996 WL 374184 at *1 (Social Security Administration, July 2, 1996) (a claimant's RFC represents her ability to perform "work-related

physical and mental activities in a work setting on a regular and continuing basis,” defined as “8 hours a day, for 5 days a week, or an equivalent work schedule”). Plaintiff argues that she is entitled to relief because the ALJ’s RFC determination is not supported by substantial evidence.

The medical evidence reveals that Plaintiff’s ability to perform work activities is much more limited than the ALJ recognized. Plaintiff suffers from carpal tunnel syndrome and osteoarthritis in both hands. (PageID.490-91, 493, 526-27, 531, 583-84). Plaintiff also experiences osteoarthritis, pain, and swelling in her lower extremities. (PageID.492-93, 497-98, 513-15, 568-69, 580, 584, 588-89). Physical examination has revealed “digital dexterity loss” and arthritic changes in Plaintiff’s feet. (PageID.544). The record does not support the ALJ’s conclusion that Plaintiff can: (1) stand/walk for six hours during an 8-hour workday; (2) frequently balance, stoop, kneel, crouch, or crawl; or (3) climb ladders, ropes, and scaffolds. In sum, the ALJ’s conclusion that Plaintiff can perform a wide range of light work on a regular and continuing basis is not supported by substantial evidence. Because the vocational expert’s testimony was premised upon a faulty RFC determination, the ALJ’s reliance thereon does not constitute substantial evidence. *See Cline v. Comm’r of Soc. Sec.*, 96 F.3d 146, 150 (6th Cir. 1996) (while the ALJ may rely upon responses to hypothetical questions posed to a vocational expert, such questions must accurately portray the claimant’s impairments).

II. Remand is Appropriate

While the Court finds that the ALJ’s decision fails to comply with the relevant legal standards, Plaintiff can be awarded benefits only if “all essential factual issues have been resolved” and “the record adequately establishes [her] entitlement to benefits.” *Faucher v. Secretary of Health*

and Human Serv's, 17 F.3d 171, 176 (6th Cir. 1994); *see also, Brooks v. Commissioner of Social Security*, 531 Fed. Appx. 636, 644 (6th Cir., Aug. 6, 2013). This latter requirement is satisfied “where the proof of disability is overwhelming or where proof of disability is strong and evidence to the contrary is lacking.” *Faucher*, 17 F.3d at 176; *see also, Brooks*, 531 Fed. Appx. at 644. Evaluation of Plaintiff’s claim, including her claim that she is disabled pursuant to the medical-vocational guidelines, requires the resolution of certain factual disputes which this Court is neither competent nor authorized to undertake in the first instance. Moreover, there does not exist compelling evidence that Plaintiff is disabled. Accordingly, this matter must be remanded for further administrative action.

CONCLUSION

For the reasons articulated herein, the Court concludes that the ALJ’s decision is not supported by substantial evidence. Accordingly, the Commissioner’s decision is **vacated and the matter remanded for further factual findings pursuant to sentence four of 42 U.S.C. § 405(g)**. A judgment consistent with this opinion will enter.

Date: March 29, 2017

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge